SENATE BILL No. 453

By Committee on Public Health and Welfare

AN ACT concerning adult care homes; health professions and practices; relating to unlicensed employees; certified aide; unlicensed employees working in adult care homes; requiring unlicensed employee; certified aide unlicensed employee training courses to be taught and evaluated by professional licensed nurses; requiring a demonstration of skills to successfully complete training courses; allowing simulation experiences to be used as part of training courses; requiring the board of nursing to report to certain legislative committees on the number and nature of complaints received; amending K.S.A. 39-936 and 65-5115 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. On or before January 9, 2023, and on or before the first day of each regular session of the legislature thereafter, the board of nursing shall submit a report to the house of representatives standing committee on health and human services and the senate standing committee on public health and welfare, or any successor committees thereto, on the number and nature of complaints filed, investigated or charged pursuant to K.S.A. 65-1120(b), and amendments thereto, in the prior calendar year concerning any person licensed, certified, registered or otherwise regulated by the board of nursing. Such report shall not include any personally identifiable information or any information that is confidential or otherwise restricted from disclosure under the open records act or any other provision of law.

Section 1. Sec. 2. K.S.A. 39-936 is hereby amended to read as follows: 39-936. (a) The presence of each resident in an adult care home shall be covered by a statement provided at the time of admission, or prior thereto, setting forth the general responsibilities and services and daily or monthly charges for such responsibilities and services. Each resident shall be provided with a copy of such statement, with a copy going to any individual responsible for payment of such services and the adult care home shall keep a copy of such statement in the resident's file. No such statement shall be construed to relieve any adult care home of any
requirement or obligation imposed upon it by law or by any requirement, standard or rule and regulation adopted pursuant thereto.

(b) A qualified person or persons shall be in attendance at all times upon when residents receiving accommodation, board, care, training or treatment in adult care homes. The licensing agency may establish necessary standards and rules and regulations prescribing the number, qualifications, training, standards of conduct and integrity for such qualified person or persons attendant upon the residents.

(c) (1) The licensing agency shall require unlicensed employees of certified aides unlicensed employees working in an adult care home, except an adult care home licensed for the provision of services to people with intellectual disability that has been granted an exception by the secretary for aging and disability services upon a finding by the licensing agency that an appropriate approved training program for unlicensed employees certified nurse aides is in place for such adult care home, employed on and after the effective date of this act who provide direct, individual care to residents and who do not administer medications to residents and who have not completed a course of education and training relating to resident care and treatment approved by the secretary for aging and disability services or are not not participating in such a course on the effective date of this act to complete successfully 40 hours of training in basic resident care skills. Any unlicensed person certified aide unlicensed employee who has not completed at least 40 hours of the certified nurse aide training relating to resident care and treatment approved by the secretary for aging and disability services or who is not making progress to complete the course of education and training required by the secretary for aging and disability services under paragraph (2) within four months following completion of such 40 hours shall not provide direct, individual care to residents.

(A) Each instructor of such training course shall be licensed and in good standing to practice in this state as a registered professional nurse or a licensed practical nurse. An instructor with multistate licensure privilege shall satisfy this requirement.

(B) The 40 hours of training shall be supervised by a registered professional nurse and the content and administration thereof shall comply with rules and regulations adopted by the secretary for aging and disability services and remaining hours in the certified nurse aide training shall be performed under the general supervision of a course supervisor. The course supervisor shall be defined in rules and regulations and approved by the secretary for aging and disability services. As used in this subparagraph, "supervision" means the same as defined in K.S.A. 65-1165, and amendments thereto. The 40 hours of training may be prepared and administered by an adult care home, hospital, as defined in
K.S.A. 65-425, and amendments thereto, hospice or program for all-inclusive care for the elderly or by any other qualified person course sponsor and may be conducted on the premises of the adult care home, hospital, hospice or program for all-inclusive care for the elderly. The 40 hours of training required in this section shall be a part of any course of education and training an approved certified nurse aide training course required by the secretary for aging and disability services under subsection (c)(2).

(B) Each instructor under the supervision of a course supervisor of the certified nurse aide training course shall be licensed to practice in Kansas and in good standing. As used in this subparagraph, "in good standing" includes the possession of a license, certificate or registration that is subject to probation or non-disciplinary conditions, limitations or restrictions, but does not include a license, certificate or registration that is revoked, canceled or surrendered or subject to pending license-related disciplinary action. If the records of the Kansas department for aging and disability services reflect that an individual has a prohibiting offense, such license, certificate or registration shall not be considered "in good standing." Any license, certificate or registration that is subject to disciplinary conditions, limitations or restrictions shall remain subject to such conditions, limitations or restrictions.

(C) Training for paid nutrition assistants shall consist of at least eight hours of instruction, at a minimum, that meets the requirements of 42 C.F.R. § 483.160.

(2) The licensing agency may require unlicensed employees of certified aides unlicensed employees working in an adult care home, except an adult care home licensed for the provision of services to people with intellectual disability that has been granted an exception by the secretary for aging and disability services upon a finding by the licensing agency that an appropriate training program for unlicensed employees certified nurse aides is in place for such adult care home, who provide direct, individual care to residents and who do not administer medications to residents and who do not meet the definition of paid nutrition assistant under K.S.A. 39-923(a)(27), and amendments thereto, after 90 days of employment to successfully complete an approved course of instruction and an examination relating to resident care and treatment as a condition to continued employment by an adult care home.

(A) A course of instruction may be prepared and administered by any adult care home, hospital, as defined in K.S.A. 65-425, and amendments thereto, hospice or program for all-inclusive care for the elderly or by any other qualified person. A course of instruction prepared and administered by an adult care home, hospital, hospice or program
for all-inclusive care for the elderly may be conducted on the premises of the adult care home, hospital, hospice or program for all-inclusive care for the elderly that prepared and that will administer the course of instruction. Simulation experiences may be used in the clinical instruction portions of a training course. If the training course is conducted in two parts, simulation experiences are limited to half of the clinical instruction hours.

(B) As evidence of successful completion of the training course, such unlicensed employees certified aides unlicensed employees shall demonstrate competency in a list of skills that are identified and prescribed by the secretary for aging and disability services. The skills demonstration shall be evaluated by a registered professional nurse licensed, including multistate licensure privilege, and in good standing in this state. Such registered professional nurse shall have at least one year of licensed nurse experience providing care for the elderly or chronically ill in a healthcare setting approved by the secretary for aging and disability services. As used in this subparagraph, "in good standing" includes the possession of a license, certificate or registration that is subject to probation or non-disciplinary conditions, limitations or restrictions, but does not include a license, certificate or registration that is revoked, canceled or surrendered or subject to pending license-related disciplinary action. If the records of the Kansas department for aging and disability services reflect that an individual has a prohibiting offense, such license, certificate or registration shall not be considered "in good standing." Any license, certificate or registration that is subject to disciplinary conditions, limitations or restrictions shall remain subject to such conditions, limitations or restrictions.

(3) The licensing agency shall not require unlicensed employees of certified aides unlicensed employees working in an adult care home who provide direct, individual care to residents and who do not administer medications to residents to enroll in any particular approved course of instruction as a condition to the taking of an examination, but the secretary for aging and disability services shall prepare guidelines for the preparation and administration of courses of instruction and shall approve or disapprove courses of instruction.

(4) Unlicensed employees of certified aides Unlicensed employees working in adult care homes who provide direct, individual care to residents and who do not administer medications to residents may enroll in any approved course of instruction and upon completion of the approved course of instruction shall be eligible to take an examination. The examination shall be:

(A) Prescribed by the secretary for aging and disability services; shall be;
(B) reasonably related to the duties performed by—unlicensed—
employees of certified aides unlicensed employees working in adult care
homes who provide direct, individual care to residents and who do not
administer medications to residents; and
shall be—(C) the same examination given by the secretary for aging
and disability services to all—unlicensed employees of certified aides—
unlicensed employees working in adult care homes who provide direct, 
individual care to residents and who do not administer medications.

(3)(5) The secretary for aging and disability services shall fix, charge 
and collect a fee to cover all or any part of the costs of the licensing 
agency under this subsection. The fee shall be fixed by rules and 
regulations of the secretary for aging and disability services. The fee shall 
be remitted to the state treasurer in accordance with the provisions of 
K.S.A. 75-4215, and amendments thereto. Upon receipt of each such 
remittance, the state treasurer shall deposit the entire amount in the state 
treasury to the credit of the health occupations credentialing fee fund 
created by K.S.A. 39-979, and amendments thereto.

(4)(6) The secretary for aging and disability services shall establish a 
state registry containing information about—unlicensed employees of 
certified nurse aides working in adult care homes who provide direct, 
individual care to residents and who do not administer medications in compliance with the requirements pursuant to PL 100-203, subtitle C, as amended November 5, 1990.

(5)(7) No adult care home shall use an individual as an unlicensed employee of the working as a certified nurse aide in an adult care home who provides direct, individual care to residents and who does not administer medications unless the facility has inquired of the state registry as to information contained in the registry concerning the individual.

(6)(8) (A) Beginning July 1, 1993, The adult care home must shall 
require any—unlicensed employee of the certified nurse aide working in an adult care home who to complete an approved refresher course if such employee:

(i) Provides direct, individual care to residents and who;
(ii) does not administer medications; and who;
(iii) since passing the examination required under paragraph (2)—of this subsection, has had a continuous period of 24 consecutive months 
during none of which the unlicensed employee certified nurse aide has not provided direct, individual care to residents to complete an approved refresher course.

(B) The secretary for aging and disability services shall prepare 
guidelines for the preparation and administration of refresher courses and shall approve or disapprove courses.

(d) Any person who has been employed as an unlicensed employee of
a certified nurse aide working in an adult care home in another state may be so employed in this state without an examination if the secretary for aging and disability services determines that such other state requires training or examination, or both, for such employees at least equal to that required by this state.

(e) All medical care and treatment shall be given under the direction of a physician licensed by the state board of healing arts to practice under the laws of this state medicine and surgery and shall be provided promptly as needed.

(f) No adult care home shall require as a condition of admission to or as a condition to continued residence in the adult care home that a person change from a supplier of medication needs of their choice to a supplier of medication selected by the adult care home. Nothing in this subsection (f) shall be construed to abrogate or affect any agreements entered into prior to the effective date of this act between the adult care home and any person seeking admission to or resident of the adult care home.

(g) Except in emergencies as defined by rules and regulations of the licensing agency and except as otherwise authorized under federal law, no resident may be transferred from or discharged from an adult care home involuntarily unless the resident or legal guardian of the resident has been notified in writing at least 30 days in advance of a transfer or discharge of the resident.

(h) No resident who relies in good faith upon spiritual means or prayer for healing shall, if such resident objects thereto, be required to undergo medical care or treatment.

Sec. 3. K.S.A. 65-5115 is hereby amended to read as follows: 65-5115. (a) The secretary may require, as a condition to continued employment by a home health agency that home health aides, within 90 days of employment, successfully complete an approved course of instruction and take and satisfactorily pass an examination prescribed by the secretary.

(b) A course of instruction for home health aides may be prepared and administered by any home health agency or by any other qualified person. A course of instruction prepared and administered by a home health agency may be conducted on the premises of the home health agency which prepared and will administer the course of instruction. The secretary shall not require home health aides to enroll in any particular approved course of instruction, but the secretary shall prepare guidelines for the preparation and administration of courses of instruction and shall approve or disapprove courses of instruction.

(c) The secretary may not require that home health aides complete the course of instruction and pass the examination established pursuant to K.S.A. 39-936(c)(3) 39-936(c)(5), and amendments thereto,
before enrolling in an approved course of instruction authorized by this section. Home health aides may enroll in any approved course of instruction.

(d) The examination required under by this section shall be prescribed by the secretary and shall be reasonably related to the duties performed by home health aides. The same examination shall be given by the secretary to all home health aides.

(e) The secretary shall fix, charge and collect an examination fee to cover all or any part of the cost of the examination required under subsection (a) by this section. The examination fee shall be fixed by rules and regulations of the secretary. The examination fee shall be deposited in the state treasury and credited to the state general fund.

Sec. 3. K.S.A. 39-936 and 65-5115 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.